



ITG News

Keeping First Nations Informed



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Message From The Director

As many of you are aware, we have been working on the development of an IRS/ Tribal Consultation Policy for the past 18 months. We have followed a structured process that was suggested by the Advisory Committee to the Tax Exempt Government Entities Commissioner. That process included a series of 12 listening meetings and a comment period on the discussions that took place at those meetings.

I am pleased to announce that we have taken another step forward in the evolution of the policy, through the formation of a volunteer drafting group that included twelve tribal representatives. This group met in July and completed an outline of a draft policy that was heavily reliant on the feedback from the previous listening meetings. The outline was posted to our web site at www.irs.gov/tribes, along with a listing of the drafting committee members. Feedback was solicited, which could be provided to any member.

The drafting group will be meeting in late October to finalize the language in the draft policy. We hope to have the TEGE Commissioner meet with the group at that time, after which the policy will be subjected to a formal review.

While we have been very deliberate in the creation of the IRS/Tribal Consultation Policy, it is our hope that the steps we have taken will lead to a policy that works well for everyone, and enables maximum dialogue to occur wherever possible. If you have any questions or suggestions, please feel free to contact any of the members of the drafting group. Their names and contact information are listed on page 2 of this newsletter.

Christie Jacobs



IN THIS ISSUE

Message from the Director	1
Consultation Policy Drafting Group Members	2
Magnetic Media Specifications Outlined by FinCEN	3
Abusive Schemes Update	3
S Corporation Shareholder	4-6
Tax Calendar	7/8





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Magnetic Media Specifications for Title 31 Reports Are Updated

The Financial Crimes Enforcement Network has updated the Magnetic Media Filing specifications for the various forms required under Title 31. This includes FinCEN Forms 102 and 103, which are the common forms filed by tribal casinos.

The requirements for magnetic media filing of the Currency Transaction Report by Casinos (FinCEN Form 103) are contained in a 46 page document that can be accessed at http://www.fincen.gov/magmed_ctr.pdf. The specifications for Suspicious Activity Reports (SARCs) are reflected in a 29 page document that can be accessed at http://www.fincen.gov/magmed_sarc.pdf.

The specification changes are effective February 1, 2005.

Abusive Schemes Continues to be an Area of Focus

The office of Indian Tribal Governments continues to focus on combating abusive schemes that are surfacing in Indian country. Our intent is to take actions that will protect tribal assets and minimize financial risk to the tribes and tribal members. Many schemes occur without the direct knowledge of the tribe, and/or without an understanding of the consequences by the tribe. They are a major concern for both the Service and Tribal governments who are struggling to protect their sovereignty and fledging enterprises, and maintain the support of Congress and the general public. These concerns are magnified by increasing attempts by promoters to use the tax and legal status of tribes to shelter transactions from taxation and oversight.

Risks can arise when a promoter gains a foothold within a tribal enterprise and convinces a tribe to implement programs that often sound "too good to be true". Recent examples we have uncovered include improper deferrals of per capita distributions to members, improper practices involving employee leasing entities, and embezzlement of tribal funds.

We are actively seeking to partner with tribes to address these issues. Our web site was recently updated to include a special section on abusive schemes, along with a link for reporting them via e-mail or in writing. We have also included brief descriptions of the specific areas currently under review, and we will be expanding that section in the near future.

We appreciate the assistance of several tribes and tribal organizations that have been supporting this effort, and we welcome others to join with us to ensure that we can jointly address these problems as quickly as possible. Specific questions or concerns relating to abusive schemes can be directed to Ken Voght at (716) 686-4860, or via e-mail at tege.itg.schemes@irs.gov.





Is a Federally Recognized Indian Tribal Government Eligible to be an S Corporation Shareholder?

Rev. Rul. 2004-50

Section 1361. -- Small Business Corporation

26 CFR: 1.1361(b): Small business corporation defined.

2004 IRB LEXIS 206; 2004-22 I.R.B. 1; REV. RUL. 2004-50

May 6, 2004

ISSUE

Is a federally recognized Indian tribal government, as described in § 7701(a)(40)(A) of the Internal Revenue Code, an eligible S corporation shareholder under § 1361?

FACTS

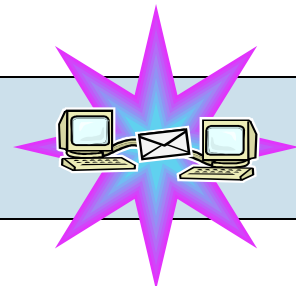
X is a federally recognized Indian tribal government (Indian tribal government) and a shareholder in Corporation, a domestic entity, formed in accordance with the laws of State. Corporation wants to make an election to be an S corporation.

LAW AND ANALYSIS

Section 1361(a) provides that for purposes of this title, the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for the year.

Section 1361(b)(1) provides that for purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not (A) have more than 75 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in subsection (c)(2), or an organization described in subsection (c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than one class of stock.

To add your name or e-mail address to our mailing list, please contact us via e-mail at gary.l.hahn@irs.gov, or call Gary Hahn at (716) 686-4862.





Continued from Page 4...

Section 1361(c)(6) provides that for purposes of subsection (b)(1)(B), an organization which is (A) described in § 401(a) or 501(c)(3), and (B) exempt from taxation under § 501(a), may be a shareholder in an S corporation.

Section 401(a) provides the definition of a qualified pension, profit-sharing, and stock bonus plans that qualifies under § 1361(b) as an eligible S corporation shareholder.

Section 501(a) provides that an organization described in subsection (c) or (d) or § 401(a) shall be exempt from taxation under this subtitle unless that exemption is denied under § 502 or § 503.

Section 501(c)(3) describes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literacy, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in section (h)), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Section 7701(a)(40)(A) states that the term "Indian tribal government" refers to the governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, which is determined by the Secretary of the Treasury, after consultation with the Secretary of the Interior, to exercise governmental functions.

Section 7871(a) and § 305.7871-1 of the Income Tax Regulations provide that Indian tribal governments will be treated as states for certain enumerated federal tax purposes.

Section 7871(d) states that, for purposes of § 7871(a), a subdivision of an Indian tribal government shall be treated as a political subdivision of a state if (and only if) the Secretary of the Treasury determines (after consultation with the Secretary of the Interior) that the subdivision has been delegated the right to exercise one or more of the substantial governmental functions of the Indian tribal government.



Continued from Page 5...

Rev. Proc. 2002-64, 2002-2 C.B. 717, provides the most recent list of federally recognized tribal governments. In the situation described in this ruling, X is a federally recognized Indian tribal government.

Generally, federal income tax statutes do not tax Indian tribes. See Rev. Rul. 67-284, 1967-2 C.B. 55. An Indian tribe is not subject to federal income tax as an individual under § 1 or as a corporation under § 11. However, colleges and universities formed by Indian tribes are subject to § 511(a)(2)(B) (relating to the taxation of colleges and universities which are agencies or instrumentalities of governments or their political subdivisions) pursuant to § 7871(a)(5). Indian tribes also are subject to certain excise taxes.

Rev. Rul. 60-384, 1960-2 C.B. 172, provides circumstances under which a governmental agency is prohibited from qualifying as a § 501(c)(3) organization. A state or municipality itself will not qualify as an organization described in § 501(c)(3) since its purposes are clearly not exclusively those described in § 501(c)(3). Where a particular branch or department under whose jurisdiction the activity in question is being coordinated is an integral part of a state or municipal government, the provisions of § 501(c)(3) would also not be applicable.

Based on the above law and published guidance, X, an Indian tribal government, is not subject to federal income tax as an individual under § 1. Because an Indian tribal government is not subject to tax as an individual for § 1 purposes, it is not considered an individual under § 1361(b)(1)(B).

In addition, X, an Indian tribal government, does not qualify under the § 1362(c)(6) exception for certain exempt organizations described in § 501(c)(3) or § 401(a). X is not a § 401(a) organization because it is not a qualified pension, profit-sharing, or stock bonus plan. Furthermore, X is not a § 501(c)(3) organization because it is a government and its purposes are not exclusively those described in § 501(c)(3). Consequently, X is not an eligible S corporation shareholder, and Corporation cannot make an election to be an S corporation.

HOLDING

A federally recognized Indian tribal government is not an eligible S corporation shareholder for purposes of § 1361.

DRAFTING INFORMATION

The principal author of this revenue ruling is Laura C. Nash of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Ms. Nash at (202) 622-3050 (not a toll free call).



Federal Tax Calendar for Fourth Quarter 2004

October 2004

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6 * Make a deposit for 9/29-10/1	7	8 * Make a deposit for 10/2-10/5	9
10	11	12 Employees report September tip income to employers if greater than \$20	13	14 * Make a deposit for 10/6-10/8	15 * Make a deposit for 10/9-10/12 ** Make a deposit for September if under the monthly deposit rule	16
17	18	19	20 * Make a deposit for 10/13-10/15	21	22 * Make a deposit for 10/16-10/19	23
24	25	26	27 * Make a deposit for 10/20-10/22	28	29 * Make a deposit for 10/23-10/26	30
31						

November 2004

SUN	MON	TUE	WED	THU	FRI	SAT
	1 Deposit Federal Un- employment Tax through September if greater than \$100	2	3 * Make a deposit for 10/27-10/29	4	5 * Make a deposit for 10/30-11/2	6
7	8	9	10 * Make a deposit for 11/3-11/5 Employees report October tip income to employers if greater than \$20	11	12	13
14	15 * Make a deposit for 11/6-11/9 ** Make a deposit for October if under the monthly deposit rule	16	17 * Make a deposit for 11/10-11/12	18	19 * Make a deposit for 11/13-11/16	20
21	22	23	24 * Make a deposit for 11/17-11/19	25	26	27
28	29 * Make a deposit for 11/20-11/23	30				

* = Make a Payroll Deposit if you are under the semi-weekly deposit rule.

** = Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.



Federal Tax Calendar for Fourth Quarter 2004

December 2004

SUN	MON	TUE	WED	THU	FRI	SAT
			1 * Make a deposit for 11/24-11/26	2	3 * Make a deposit for 11/27-11/30	4
5	6	7	8 * Make a deposit for 12/1-12/3	9	10 * Make a deposit for 12/4-12/7 Employees report November tip income to employers if greater than \$20	11
12	13	14	15 * Make a deposit for 12/8-12/10 ** Make a deposit for November if under the monthly deposit rule	16	17 * Make a deposit for 12/11-12/14	18
19	20	21	22 * Make a deposit for 12/15-12/17	23	24	25
26	27 * Make a deposit for 12/18-12/21	28	29 * Make a deposit for 12/22-12/24	30	31	

*= Make a Payroll Deposit if you are under the semi-weekly deposit rule.

**= Make a Monthly Deposit if you qualify under that rule.

NOTE: Deposits made through EFTPS are due one day prior to the dates listed.

Return Filing Dates

November 1st

File Form 941 for the third quarter of 2004 (if tax is deposited in full and on time, file by November 10th)

File Form 730 and pay the tax on applicable wages accepted during September

November 30th

File Form 730 and pay the tax on applicable wages accepted during October

January 3rd, 2005

File Form 730 and pay the tax on applicable wages accepted during November

